THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.12293 OF 1998

DATED 14th NOVEMBER 2007

BETWEEN:

D.Musala Reddy and others

… Petitioners

AND

The District Collector, Nellore, Nellore District and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.12293 OF 1998

ORDER:

The petitioners who are ninety seven (97) in number are residents of Chamadala village of Jaladani Mandal in Nellore District. They are ayacutdars of Guravareddypalem tank (chamadala tank, for brevity) admeasuring Acs.144.56 situated in survey Nos.404 and 405 of said village. It is a private tank jointly owned by four families. Off and on, petitioner ayacutdars faced trouble as and when the tank breached. Though temporary repairs were undertaken by Irrigation and Revenue Departments, the ownership of the land remains with the private owners. It is alleged that most of the owners of tank sold away their ayacut lands and are no more interested in the land.

When another private tank constituted at Brahmanakaka village of Kavali Mandal, Nellore District breached in 1987, the owners filed writ petition contending that unless the tank is acquired by Government paying compensation, repairs cannot be undertaken. The said writ petition was disposed of by this Court on 17.06.1987 observing that first respondent herein should initiate action under the provisions of Land Acquisition Act, 1894 (the Act, for brevity). In 1988, the fourth and fifth respondents filed W.P.No.5121 of 1988 seeking a direction to Government to acquire chamadala tank. By order, dated 17.08.1994, while disposing of the writ petition, this Court directed the District Collector, Nellore – first respondent herein; to initiate action under the Act and addressed a letter to Government. This Court also observed that the entire proceedings be completed within a period of six months from the date of copy of the said order. First respondent did not initiate action nor Government passed any orders. Therefore, instant writ petition is filed seeking a writ of Mandamus to respondents 1 to 3 to initiate proceedings under Land Acquisition Act for acquiring Guravareddypalem tank (chamadala tank) in patta No.36.

Respondents 2 and 3 as well as respondents 4 and 5 filed separate counters. The respondents 4 and 5 have no objection if the land is acquired. Second respondent who filed on behalf of 2 and 3 does not dispute the factual background as averred by petitioners. The writ petition, however, is opposed saying that in view of the changed policy of Government, acquisition proceedings in respect of chamadala kothacheruvu cannot be initiated. It is also alleged that when the private tank benefits only a group of individuals and the same is not public trust and that the Government starts acquiring private tanks and several private tank owners would seek similar relief.

This Court has heard learned counsel for petitioners, learned

Assistant Government Pleader for Land Acquisition and learned counsel for respondents 4 and 5. There is no dispute or denial that the Mandamus issued by this Court in W.P.No.5121 of 1988, dated 17.08.1994 has become final. The order passed by this Court in the said writ petition reads as below.

> Admittedly, the tank in question which is held by the petitioners, is a private tank; but the repairs were proposed to be effected for the benefit of ayacutdars. Memo No.892/M1/85-2, dt.17.6.1987 was issued by the State Government prescribing some guidelines for matters like this. The purport of the said memo is to direct the acquisition of the land before any such work is taken up. In fact, similar thing came up for consideration before this Court in W.P.No.6414 of 1987. Sri M.N.Rao,J by order dated 5.7.1989, directed to comply the procedure under Land Acquisition Act prescribing some time. In fact, in the counter filed by the Government, it is stated that they have initiated proceedings and that they are pending. But, that was long back in the month of October, 87. But, as yet no notification under Section 4(1) of the Land Acquisition Act, 1894 has been issued. In the circumstances, I direct the first respondent to initiate action for under the Land Acquisition Act and address a letter in that regard to the Government, and the entire process of initiation of Land Acquisition proceedings and also passing of the award and taking possession should be completed within a period of six (6) months from the date of receipt of a copy of this order. Until such time, the status quo obtained as on this date shall be maintained.
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> The writ petition is disposed of with the above direction. No costs.

A perusal of the same would show that in the said writ petition, District Collector filed counter affidavit stating that land acquisition proceedings are initiated and are pending, and that in the month of October, 1987, proposals were sent but notification under Section 4(1) of the Act is yet to be issued. When the proposal was initiated as submitted before this Court for acquiring chamadala tank, the mandamus issued by this Court is binding on the Government. Even if there is a policy change, the same does not invalidate Mandamus issued by Court. The Mandamus issued by this Court cannot be nullified by the executive fiat. It is well settled that the Judgment of this Court is binding on Government and, unless and until the basis of the Judgment is removed, even Legislature cannot invalidate the Judgment of the Court. Except the objection that there is a policy change, no objection is raised by Superintending Engineer, who filed the counter affidavit.

In view of the above, a Mandamus shall issue to the District Collector, Nellore, to forthwith send proposals to Government of Andhra Pradesh proposing to acquire an extent of unencroached area in survey

Numbers 404 and 405 (patta No.36) situated at Chamadala village, which is classified as Guravareddypalem tank. After receipt of such proposal, the Government of Andhra Pradesh shall take necessary steps for acquiring the land within a period of three months thereafter.

The writ petition is accordingly allowed. No costs.

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(V.V.S.RAO,J)

14.11.2007.
Pln

Note: Send a copy of order to Government of Andhra Pradesh,
Represented by Principal Secretary to Government,
Irrigation Department, Hyderabad.
(By order)
pln